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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**SECURITIES AND EXCHANGE  
COMMISSION,**

Plaintiff,

v.

**AEQUITAS MANAGEMENT, LLC;  
HOLDINGS, LLC; AEQUITAS  
COMMERCIAL FINANCE, INC.;  
AEQUITAS CAPITAL  
MANAGEMENT, INC.; AEQUITAS  
INVESTMENT MANAGEMENT,  
LLC; ROBERT J. JESENİK; BRIAN  
A. OLIVER; and N. SCOTT GILLIS,**

Defendants.

Case No. 3:16-cv-00438-JR

**MOTION TO INTERVENE AND  
FOR LIMITED RELIEF FROM  
RECEIVERSHIP ORDER TO  
PERMIT PAYMENT OF LEGAL  
FEES AND EXPENSES**

**EXPEDITED HEARING AND  
ORAL ARGUMENT REQUESTED**

MOTION

Non-party Andrew MacRitchie (“MacRitchie”), a former officer of  
defendant Aequitas Holdings LLC, hereby moves to intervene in this action,

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pursuant to Rule 24 of the Federal Rules of Civil Procedure, for the purpose of seeking limited relief from the Order Appointing Receiver dated April 14, 2016 (the “Receivership Order”) to permit payment of legal fees and expenses incurred by MacRitchie (“Defense Costs”) in connection with the investigation and litigation commenced by the Securities and Exchange Commission (“SEC”) and a parallel investigation and related criminal proceedings initiated by the U.S. Department of Justice (“DOJ”). In particular, MacRitchie seeks an order allowing Starr Indemnity & Liability Company (“Starr”) to advance past and future Defense Costs pursuant to a Directors and Officers liability insurance policy under which MacRitchie is a beneficiary. MacRitchie requests oral argument and an expedited hearing on this motion because MacRitchie would suffer substantial prejudice to his ability to respond to the DOJ investigation and criminal proceedings if his past and future Defense Costs are not advanced by Starr. In a letter dated May 17, 2019, counsel for Starr confirmed that Starr will advance Defense Costs to MacRitchie if this Court grants limited relief from the Receivership Order to allow Starr to make such payments to MacRitchie. Thus, expedited consideration of this motion may result in the immediate alleviation of the substantial prejudice that would otherwise be suffered by MacRitchie.

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### LOCAL RULE 7-1 COMPLIANCE

Pursuant to Local Rule 7-1(a), counsel for MacRitchie met and conferred in good faith through telephone conference and email communications with counsel for the Receiver and plaintiff's counsel regarding this Motion. Counsel for the Receiver declined to stipulate to the relief requested by MacRitchie. Counsel for the SEC did not object to the limited intervention requested by MacRitchie and takes no position concerning the relief requested by MacRitchie regarding access to insurance coverage. Counsel for the defendants expect to seek similar relief regarding access to insurance coverage.

### MEMORANDUM OF LAW

#### I. Background

During the period from 2014 through the appointment of the Receiver in this action, MacRitchie served as the Executive Vice President Corporate Development & Government Affairs at Aequitas Holdings LLC (the "Company"). Starr issued the Starr Secure Excess Liability Policy (Number SISIXFL21175714) in the amount of \$5 million excess of \$10 million to the Company effective July 1, 2014 (the "Starr Policy"). MacRitchie is an Insured Person under the terms of the Starr Policy and, therefore, Starr is required to advance Defense Costs to MacRitchie.

In February 2016, MacRitchie retained Sher Tremonte LLP to represent him

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in connection with the then-pending SEC investigation concerning the Company and other related entities as well as any subsequent SEC litigation proceedings. In March 2016, the SEC filed its complaint in this action. On April 14, 2016, upon application of the SEC, this Court issued the Receivership Order.

On May 12, 2016, defendants Robert J. Jesenik, Brian A. Oliver and N. Scott Gillis (the “Individual Defendants”) filed a motion for relief from the Receivership Order for the limited purpose of allowing Caitlin Specialty Insurance Company (“Caitlin”) to advance Defense Costs incurred by the Individual Defendants. (Dkt. No. 176) Like MacRitchie, each of the Individual Defendants were an Insured Person under the insurance policy issued by Caitlin. On May 20, 2016, counsel for the Individual Defendants and counsel for the Receiver entered into a Stipulation that allowed Caitlin to advance Defense Costs to the Individual Defendants. (Dkt. No. 184) On May 23, 2016, Magistrate Judge Paul Papak “so ordered” that stipulation. (Dkt. No. 185 at 5)

In April 2017, counsel for Olaf Janke (“Janke”), the former Chief Financial Officer of the Company, and counsel for the Receiver entered into a stipulation that allowed Catlin to advance Defense Costs to Janke. (Dkt. No. 434) On April 27, 2017, Magistrate Judge Papak “so ordered” that stipulation. (Dkt. No. 435 at 5)

In August 2017, the Individual Defendants filed motions for relief from the

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Receivership Order for the limited purpose of allowing Forge Underwriting Limited (“Forge”) to advance Defense Costs incurred by the Individual Defendants. (Dkt. Nos. 496, 499). On October 23, 2017, over the objections of the Receiver, Magistrate Judge Papak issued an Opinion and Order (the “October 2017 Order”) that granted the motions of the Individual Defendants to lift the asset freeze contained in the Receivership Order to the limited extent necessary for Forge to advance Defense Costs to the Individual Defendants. (Dkt. No. 551) The October 2017 Order acknowledged that the Individual Defendants’ entitlement to reimbursement of their Defense Costs “absent the asset freeze, would be undisputed and unfettered.” *Id.* at 11.

In August 2018, counsel for the Individual Defendants and the Receiver submitted a stipulation that contained prospective relief from the Receivership Order to allow Starr to advance up to \$237,522.33 in Defense Costs either already incurred or to be incurred by the Individual Defendants. (Dkt. No. 645) On August 16, 2018, Magistrate Judge Papak issued an order that conformed to the stipulation filed by counsel for the Individual Defendants and counsel for the Receiver concerning payment of certain Defense Costs. (Dkt. No. 646).

On November 5, 2018, counsel for the Individual Defendants and the Receiver submitted an additional stipulation that contained prospective relief from

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the Receivership Order to allow Starr to advance up to \$90,000 in Defense Costs either incurred or to be incurred by the Individual Defendants. (Dkt. No. 659) On November 6, 2018, Magistrate Judge Jolie A. Russo “so ordered” the stipulation. (Dkt. No. 660)

During the period from February 2016 through March 2019, MacRitchie incurred only modest Defense Costs because: (a) the SEC did not name MacRitchie as a defendant in this action; (b) the SEC did not take investigative testimony from MacRitchie prior to the filing of the complaint in this action; and (c) the SEC did not take MacRitchie’s deposition in this action, although some preliminary communications among counsel were held in May 2018 concerning a possible deposition of MacRitchie to be conducted in June 2018. Recently, however, MacRitchie has incurred Defense Costs in connection with the DOJ investigation and expects to continue to incur Defense Costs in that matter. For example, in connection with that investigation, MacRitchie has retained Kaufman Kilberg LLC to provide advice in that matter and serve as local legal counsel in that matter, this SEC action, and a declaratory judgment action recently commenced by Starr and other insurers against MacRitchie and others.

As a result, counsel for MacRitchie requested written confirmation of coverage under the Starr Policy from counsel for Starr. On May 17, 2019, counsel

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for Starr confirmed that Starr would advance Defense Costs to MacRitchie if allowed to do so by this Court. A copy of the May 17, 2019 letter from counsel for Starr is attached as Exhibit A to the accompanying declaration of Samuel Kauffman, dated July 26, 2019.

## II. Motion to Intervene

MacRitchie seeks intervention as of right, or alternatively, permissively, for the limited purpose of seeking relief from the portion of the Receivership Order that prohibits Starr from honoring its obligation to advance Defense Costs to MacRitchie.

Rule 24(a)(2) of the Federal Rules of Civil Procedure (“FRCP”) provides that this Court “must permit” intervention by a person who “claims an interest relating to the property . . . that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” Under precedent in this Circuit, “Rule 24(a)(2) is construed broadly in favor of proposed intervenors and ‘[courts] are guided primarily by practical considerations.’” *U.S. ex rel. McGough v. Covington Technologies*, 967 F.2d 1391, 1394 (9<sup>th</sup> Cir. 1992) (quoting *U.S. v. Stringfellow*, 783 F.2d 821, 826 (9<sup>th</sup> Cir. 1986), vacated on other grounds, 480 U.S. 370 (1987)).

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Here, MacRitchie should be allowed to intervene for his limited purpose for the following reasons. First, MacRitchie's motion is timely in that he now seeks to intervene solely as a result of very recent developments involving the DOJ investigation and the limited nature of the requested intervention will not prejudice any other parties to this action. Second, MacRitchie's interest in receiving advancement of Defense Costs is directly and negatively impacted by the Receivership Order. Third, no other party to this action can adequately represent MacRitchie's interest in obtaining relief from the Receivership Order.

Alternatively, under FRCP 24(b)(1)(B), MacRitchie seeks to intervene permissively for the same limited purpose. To the extent that the Court determines that MacRitchie cannot intervene as a matter of right, MacRitchie requests that this Court exercise its broad discretion to permit MacRitchie to permit him to intervene so that he can seek advancement of Defense Costs from Starr.

### III. Motion for Limited Relief from the Receivership Order

For the same reasons put forward by the Individual Defendants in their motions for limited relief from the Receivership Order filed on May 12, 2016, August 22, 2017 and August 23, 2017 and for the same reasons set forth in the October 2017 Order, this Court should grant MacRitchie's motion for limited relief from the Receivership Order to allow Starr to advance reasonable Defense Costs to

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MacRitchie. Such relief would also be consistent with the Stipulations and Orders entered in May 2016, April 2017, August 2018 and November 2018 concerning limited relief from the Receivership Order that benefitted the Individual Defendants and former officer Olaf Janke.

CONCLUSION

For the reasons set forth, MacRitchie respectfully requests that this Court grant his motion to intervene and issue an order, substantially in the form of the accompanying proposed order to grant MacRitchie limited relief from the Receivership Order for the purpose of allowing Starr to advance past and future Defense Costs to MacRitchie.

DATED this 26<sup>th</sup> day of July 2019.

KAUFFMAN KILBERG LLC

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